

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

**THE PEOPLE OF THE STATE OF NEW YORK and the  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION, by LETITIA  
JAMES, Attorney General of the State of New York,**

**Plaintiffs,**

**v.**

**FCA US LLC, FIAT CHRYSLER AUTOMOBILES N.V.,  
V.M. MOTORI S.P.A., and V.M. NORTH AMERICA, INC.,**

**Defendants.**

**COMPLAINT**

Index No. \_\_\_\_\_

Assigned to Justice:

**I. INTRODUCTION**

1. The People of the State of New York and the New York State Department of Environmental Conservation (together, the State or the State of New York), by Letitia James, the Attorney General of the State of New York, seek relief for the massive deception of environmental regulators and consumers perpetrated by the defendants: FCA US LLC (FCA) and Fiat Chrysler Automobiles N.V. (Fiat N.V. and, together with FCA, the Fiat Defendants or simply Fiat); and VM Motori S.p.A. (VM Italy) and VM North America, Inc. (VM America and, together with VM Italy, the VM Defendants or simply VM), relating to the certification, marketing and sale to consumers of more than 100,000 model year (MY) 2014-2016

“EcoDiesel” Ram 1500 pickup trucks and Jeep Grand Cherokee sport utility vehicles (the Diesel Vehicles<sup>1</sup>), including more than 3,000 within New York.

2. Defendants designed, deployed and then concealed from the public and state and federal regulators multiple auxiliary emission control devices (AECs) in the Diesel Vehicles’ electronic control modules. Those AECs, when used alone or in combination with another device, operated as illegal “defeat devices:” software strategies that optimize emission controls during formal emissions test cycles so that emissions appear to be within legal limits while reducing emission controls outside of those test cycles (off-cycle) in normal, real-world operations.<sup>2</sup>

3. As a result of Defendants’ conduct, in real-world operation, the Diesel Vehicles emit up to 35 times the legal limits of harmful nitrogen oxides (NO<sub>x</sub>), a harmful pollutant that causes respiratory illness and premature death and that contributes to the formation of smog and particulate matter pollution, which also cause severe harm to human health.

4. Defendants engaged in this unlawful conduct in order to: (a) obtain through deceptive means the certification they needed from federal and state regulators to market and sell the Diesel Vehicles in the United States, including within New York; (b) conceal the fact that the

<sup>1</sup> The Diesel Vehicles include the following makes and models sold or leased in the United States for the 2014 through 2016 model years:

Model Year	EPA Test Group	Make and Model(s)	50 State Volume
2014	ECRXT03.05PV	FCA Dodge Ram 1500	14,083
2014	ECRXT03.05PV	FCA Jeep Grand Cherokee	14,652
2015	FCRXT03.05PV	FCA Dodge Ram 1500	31,984
2015	FCRXT03.05PV	FCA Jeep Grand Cherokee	8,421
2016	GCRXT03.05PV	FCA Dodge Ram 1500	32,219 (projected)
2016	GCRXT03.05PV	FCA Jeep Grand Cherokee	2,469 (projected)

<sup>2</sup> See Notices of Violation issued to Fiat and FCA by the U.S. Environmental Protection Agency and the California Air Resources Board on January 12, 2017 and a subsequent May 27, 2017 lawsuit filed by the U.S. Department of Justice on behalf of EPA.

Diesel Vehicles did not comply with applicable state and federal emission standards, subjecting residents of New York and others to the health risks of added air pollution; and (c) mislead the public into believing that the vehicles, which they branded as “EcoDiesels,” were “clean” and “green” and therefore a good option for purchase by environmentally conscious consumers.

5. FCA repeatedly highlighted in its consumer marketing that the Diesel Vehicles met emission standards in all 50 states and improved performance and fuel economy, which the vehicles could do only by cheating during formal emissions testing.

6. The State of New York, by and through its Attorney General, Letitia James, brings this action against Defendants pursuant to: (a) Article 19 of the Environmental Conservation Law (ECL), which protects New York’s air quality from pollution, and its implementing regulations found at 6 NYCRR Parts 200 *et seq.*, including the “Emission Standards for Motor Vehicles and Motor Vehicle Engines” set forth in 6 NYCRR Part 218; (b) General Business Law (GBL) Article 22-A, §§ 349 and 350, which prohibit deceptive acts and practices and false advertising in the conduct of business; and (c) Executive Law § 63(12). These statutory and regulatory regimes are described in more detail in paragraphs 78 to 96 below.

7. Together with appropriate injunctive and equitable relief and reasonable costs of investigation and litigation, the State of New York seeks imposition against Defendants of civil penalties in amounts sufficient to punish them for their conduct and deter them, as well as other automakers, from engaging in and repeating this form of deliberate misconduct.

8. Unless otherwise stated, the factual allegations set forth in this Complaint are based upon information obtained from the documents produced by Defendants, the testimony of Defendants’ current and former employees, publicly available reports, and information and documents obtained from other sources through the State’s investigatory efforts.

## II. PARTIES

9. Plaintiff State of New York is a sovereign entity that brings this action on behalf of its citizens and residents.
10. Plaintiff New York State Department of Environmental Conservation (DEC) is an executive agency of the State of New York, and is authorized to administer and enforce the ECL and regulations promulgated thereunder.
11. The New York Attorney General is the chief law enforcement officer of the State of New York and is authorized to bring this action pursuant to ECL §§ 71-2103 and 71-2107, GBL §§ 349 and 350-d and Executive Law § 63(12).
12. Defendant Fiat N.V. was formed in October of 2014, when Fiat S.p.A. and Fiat Investments N.V. merged. Fiat N.V. is an international automotive group engaged in designing, engineering, manufacturing, distributing and selling new motor vehicles and vehicle components, among other things. Fiat N.V. is organized under the laws of the Netherlands and its principal executive offices are located in London, England. Fiat N.V. owns and controls defendants FCA, VM Italy and VM America.
13. Defendant FCA, formerly known as Chrysler Group LLC, is a Delaware limited liability company, with a principal place of business and headquarters located at 1000 Chrysler Drive, Auburn Hills, Michigan 48326. FCA is incorporated under the laws of the State of Delaware, and is an indirect, wholly-owned subsidiary of Fiat N.V. FCA is registered to do business in New York. Fiat N.V.'s predecessor, Fiat S.p.A., began its acquisition of Chrysler Group LLC in 2009 and completed it in January 2014, at which time Chrysler Group LLC became a wholly-owned indirect subsidiary of Fiat N.V. and was renamed FCA.

14. FCA designs, engineers, manufactures, distributes, warrants, sells, and makes available for lease new motor vehicles throughout the United States, including within New York. In particular, FCA designed, manufactured, imported, distributed, warranted, offered for sale and/or lease, and sold and made available for lease the Diesel Vehicles—the EcoDiesel versions of the Ram 1500 and the Jeep Grand Cherokee—with the knowledge and intent to market and sell them in all 50 states, including through its car dealership agents in New York.

15. VM Italy is an Italian corporation that, among other things, designs and manufactures diesel-fueled motor vehicle engines. In 2011, defendant Fiat N.V. (known as Fiat S.p.A. at the time) acquired a 50% ownership interest in VM Italy. In October 2013, VM Italy became an indirect wholly-owned subsidiary of Fiat N.V. VM Italy is an affiliate of FCA. The corporate headquarters of VM Italy is in Cento, Italy. VM Italy communicated regularly with FCA about the Diesel Vehicles.

16. VM America is a Delaware corporation and wholly-owned subsidiary of Fiat N.V., with a principal place of business at 1000 Chrysler Drive, Auburn Hills, Michigan 48326. VM America was created to support VM Italy's North American customers (in particular, FCA, and for a period of time, General Motors).

17. The VM Defendants designed, manufactured, calibrated, and delivered the EcoDiesel engine system for inclusion in the Diesel Vehicles, under the supervision of the Fiat Defendants, knowing and intending that the Diesel Vehicles, along with their engine system, would be marketed, distributed, warranted, sold and leased throughout all 50 states, including in New York.

18. VM Italy transacts business in the United States. VM Italy employees have been physically present in Auburn Hills, Michigan, while working on engine calibration and air

emissions issues related to the Diesel Vehicles. Some VM America employees working in Auburn Hills are also employees of VM Italy. VM Italy employees in Italy communicated regularly about the Diesel Vehicles with the VM America and VM Italy employees located in Auburn Hills.

19. At all relevant times, each of the Defendants worked in concert with the common objective of developing, marketing, selling, and leasing the Diesel Vehicles in the United States, including within New York, including with the undisclosed AECDs and illegal defeat devices described in this Complaint. Each of the Defendants was, and still is, the agent of the others for this purpose, and each has acted, and is acting, for the common goals and profit of them all. All acts and knowledge ascribed to any one Defendant are properly imputed to the others.

### III. JURISDICTION AND VENUE

20. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants and authority to grant the relief requested pursuant to ECL § 71-2103, ECL § 71-2107, CPLR § 301, GBL § 349(b), GBL § 350-d and Executive Law § 63(12).

21. At all relevant times, Defendants have purposefully availed themselves of this forum. Among other things, Fiat N.V. controlled and/or directed its wholly-owned subsidiaries FCA and the VM Defendants in their design, development, certification, marketing, offer, sale, and lease of the Diesel Vehicles within New York.

22. In addition, FCA transacted business in New York through at least 130 car dealerships, which act as FCA's agents in selling and leasing vehicles, including the Diesel Vehicles, in disseminating marketing messaging and materials and vehicle information to customers.

23. Accordingly, the exercise of specific jurisdiction over all Defendants is consistent with due process.

24. Venue lies in Albany County pursuant to CPLR § 503(a) because, *inter alia*, the State has offices in Albany and DEC's headquarters is in Albany.

**IV. VEHICLE MANUFACTURERS MUST LIMIT HARMFUL NO<sub>x</sub> EMISSIONS AND DISCLOSE AECDS TO OBTAIN CERTIFICATION TO MARKET AND SELL THEIR VEHICLES IN THE UNITED STATES.**

25. NO<sub>x</sub>, a pollutant linked with serious health and environmental dangers, is formed at particularly high rates by combustion of diesel fuel.

26. Because of the serious health and environmental impacts of NO<sub>x</sub> emissions, state and federal emission standards impose not-to-exceed limits. Vehicle manufacturers must certify to the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) that their motor vehicles comply with those standards to obtain EPA-issued Certificates of Conformity (COCs) and CARB-issued Executive Orders (EOs). The same standards also mandate certain durability requirements for the engine and its components.

27. Of relevance here, EPA's Tier 2 Bin 5 emission standard and California's LEV II emission standard—the standards applicable to the Diesel Vehicles—impose a NO<sub>x</sub> emission limit of 0.05 grams per mile (g/mi) at a Durability Vehicle Basis of 50,000 miles and 0.07 g/mi at 120,000 miles. In other words, the regulations allow for marginally increased emissions as the vehicles and their emission control systems age.

28. CARB also requires vehicles to be equipped with on-board diagnostics (OBD) systems that monitor emissions systems for the life of the vehicle and that can detect malfunctions in those emissions control systems and notify the driver when emissions exceed certain designated levels.

29. Multiple states, including New York, enforce the State of California's Low Emission Vehicle Program Regulations (CA LEV Regulations) by adopting their own corresponding

regulations, as expressly permitted by Congress in Section 177 of the Clean Air Act, 42 U.S.C. § 7507 (Section 177). Thus, in addition to meeting EPA requirements, in order to sell their vehicles in all 50 states, manufacturers must: (a) certify to CARB that their motor vehicles comply with CARB's emission and OBD certification requirements and test procedures; (b) obtain CARB-issued EOs for each model year and for each test group showing they are certified as meeting the emission requirements of the applicable CA LEV Regulations, and as meeting the OBD requirements of the applicable OBD regulations; (c) obtain valid "environmental performance labels" disclosing their smog and global warming scores in accordance with the CA LEV Regulations; (d) obtain valid "emission control labels" showing that they are certified for sale in California under the CA LEV Regulations; and (e) warranty that the vehicles shall comply over their warranty term with all requirements of the CA LEV regulations. *See generally* California Code of Regulations (CCR) Title 13, §§ 1900 *et seq.*

**A. The Law Requires Manufacturers to Disclose AECDs and Prohibits the Use of Defeat Devices.**

30. An auxiliary emission control device or "AECD" is any element of design that senses temperature, vehicle speed, engine speed, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

31. State and federal emission regulations require vehicle manufacturers to make extensive written disclosures regarding the existence, impact of, and justification for any devices, including AECDs, that affect the operation of the emission control system.

32. CARB's emission certification requirements and test procedures require, among other things, that vehicle manufacturers disclose in their certification applications for emission compliance all AECDs used in their vehicles. Specifically, they:

- a. require manufacturers to list all AECDs installed on their vehicles, including for each a justification and a rationale for why it is not a defeat device; and
  - b. require manufacturers to list the parameters each AECD senses and controls.
33. CARB's OBD certification regulations likewise require diesel vehicle manufacturers to disclose in their OBD certification applications all AECDs used in their vehicles, along with inputs that invoke each AECD, a justification for and explanation of each AECD, the frequency of each AECD's operation, and the anticipated emission impact of each AECD.
34. CARB's emission certification requirements and test procedures further prohibit the use of all "defeat devices." A defeat device is any AECD that circumvents or reduces the effectiveness of the emission control system under normal vehicle operation and is not justified by one of four narrow conditions, none of which is applicable to the Diesel Vehicles at issue in this Complaint.
35. Vehicles equipped with defeat devices may not be certified for sale in the United States.  
**B. Manufacturers Use Multiple Emission Control Strategies to Reduce NO<sub>x</sub> Emissions.**
36. In order to meet relevant emission standards, diesel vehicle manufacturers must balance the goal of implementing effective NO<sub>x</sub> reduction controls and strategies (which can place strain on the engine and its components) against the goal of meeting engine durability requirements.
37. Each Diesel Vehicle featured **Exhaust Gas Recirculation (EGR)** and **Selective Catalytic Reduction (SCR)** hardware controlled by software incorporated into the engine electronic control modules supplied by Robert Bosch LLC and/or Robert Bosch GmbH (together, Bosch).

38. EGR is used primarily to reduce NO<sub>x</sub> emissions by redirecting exhaust back into the engine's intake system and mixing it with fresh air, thereby reducing the amount of oxygen in the engine, lowering the combustion temperature and reducing the creation of NO<sub>x</sub>.
39. SCR injects an aqueous ammonia solution into the exhaust stream after combustion but prior to emission from the tailpipe of the motor vehicle in order to produce a chemical reaction to reduce NO<sub>x</sub> to nitrogen and water. The ammonia solution is known as diesel exhaust fluid, or "DEF."
40. While both technologies have emission-related advantages (reducing NO<sub>x</sub> emissions), each also has drawbacks (reduced fuel economy and strain on engine components) that impose marketing and engineering challenges.
41. As set forth in greater detail below, Defendants were unwilling to expend the time, effort, or money necessary to address in a lawful manner the engineering trade-offs and challenges posed by the available diesel technology and applicable emission standards. They opted instead to employ illegal defeat device strategies in the Diesel Vehicles to meet design and performance targets.

**V. DEFENDANTS MADE FALSE AND MISLEADING CERTIFICATIONS AND REPRESENTATIONS TO REGULATORS AND THE PUBLIC CONCERNING THE DIESEL VEHICLES.**

42. In or around 2009, Fiat set out to leverage the diesel experience it had developed designing vehicles to meet European emission standards by selling diesel passenger vehicles in the U.S. market.
43. Early in the development process, however, Defendants determined the emission control technology employed in their European engines could not meet U.S. emission standards while still achieving desired design and performance targets.

**A. Defendants Used Defeat Devices to Cheat on Official Emissions Tests.**

44. Rather than delay release and expend the time and effort required to develop vehicles that could meet these targets while also meeting legal emission and durability requirements, Defendants implemented multiple, undisclosed AECDs (the Undisclosed AECDs) that operated to optimize EGR and SCR emission controls during formal emissions tests, but to reduce their effectiveness off-cycle.

45. As calibrated, these Undisclosed AECDs, when used alone or in combination with one or more other devices, constituted illegal defeat devices.

46. Notwithstanding the presence of multiple Undisclosed AECDs that functioned as defeat devices, FCA sought and obtained certification of the Diesel Vehicles under EPA's Tier 2 Bin 5 standards and California's LEV II emission standards by submitting certifications like the ones below:

**Defeat Device**

Chrysler Group LLC states that any element of design, system, or emission control device installed on or incorporated in Chrysler Group LLC's new motor vehicles or new motor vehicle engines, for the purpose of complying with standards prescribed under Section 202 of the Clean Air Act, are not equipped with auxiliary emission control devices that can be classified as a defeat device as defined in 40 CFR §86.1803.01.

47. FCA's submissions to EPA and CARB—and, by way of submission to CARB, to DEC—for certification of the Diesel Vehicles did not disclose the Undisclosed AECDs.

48. Further, to obtain COCs and EOs, FCA warranted that the Diesel Vehicles were designed, built and equipped to meet the emission standards in California, Connecticut, Maine, Massachusetts, New York, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Maryland and New Mexico. FCA further offered performance and defects warranties of the emission control system.

49. Defendants made these certifications with knowledge of their falsity.

**B. Once Caught in Their Deception, the Defendants Refused to Come Clean About the Defeat Devices.**

50. In or around November and December 2015, EPA conducted testing on four Ram 1500s in Ann Arbor, Michigan. All four Ram 1500s failed EPA's NO<sub>x</sub> testing. NO<sub>x</sub> testing FCA conducted on two Jeep Grand Cherokees likewise failed.

51. On or about May 27, 2016, EPA sent FCA a letter identifying eight undisclosed AECDs in the Diesel Vehicles and further demanding an explanation why each should not be considered a "defeat device."

52. Subsequent explanations and disclosures proffered by FCA did not satisfy EPA. On January 12, 2017, EPA issued a Notice of Violation to Fiat N.V. and FCA (EPA NOV) concluding:

To date, despite having the opportunity to do so, FCA has failed to demonstrate that FCA did not know, or should not have known, that a principal effect of one or more of these AECDs was to bypass, defeat, or render inoperative one or more elements of design installed to comply with emissions standards under the [Clean Air Act].

The EPA NOV explained that its testing found that "some of these AECDs appear to cause the vehicle to perform differently when the vehicle is being tested for compliance with the EPA emission standards using the Federal emission test procedure (e.g., FTP, US06) than in normal operation and use[]" and offered several "discrete examples" involving the interactions of the various AECDs "where the effectiveness of the emission control system is reduced."

53. CARB issued a similar NOV the same day.

54. Four months later, on or about May 27, 2017, EPA, through the U.S. Department of Justice, sued the Defendants.

**C. Off-Cycle Testing Confirms the Diesel Vehicles Emit NO<sub>x</sub> Far in Excess of the Legal Limits.**

55. Laboratory and on-road testing conducted by West Virginia University's Center for Alternative Fuels, Engines, and Emissions on five MY 2014 and 2015<sup>3</sup> Jeep Grand Cherokees and Ram 1500s produced by FCA indicates that these vehicles exhibited, in general, significantly increased harmful emissions of NO<sub>x</sub> during on-road operation as compared to the laboratory testing results.

56. The test vehicles were evaluated on a vehicle chassis dynamometer (sometimes called a "rolling dynamometer" or "roller") representing the test conditions for regulatory compliance, and they were also tested over-the-road using a portable emissions monitoring system (PEMS) device during a variety of driving conditions including urban/suburban and highway driving.

57. One of the 2014 Jeep Grand Cherokees and one of the 2014 Ram 1500 vehicles were tested prior to, as well as after, a mandatory vehicle recall in April 2016 of the MY 2014 Diesel Vehicles that included a software "reflash" by FCA that concerned the vehicles' emission control systems.

58. Results indicated that the MY 2014 Jeep Grand Cherokee and Ram 1500s, including the two re-flashed vehicles, exhibited, in general, significantly increased NO<sub>x</sub> emissions during on-road operation as compared to the results observed through testing on the roller.

59. MY 2015 Jeep vehicles produced from 4 to 8 times more NO<sub>x</sub> emissions during urban/rural on-road operation than the certification standard, while MY 2015 Ram 1500 vehicles had maximum NO<sub>x</sub> emission deviation factors of approximately 25 times above the relevant regulatory standards for highway driving conditions.

---

<sup>3</sup> Diesel Vehicles from MY 2016 are identical to the MY 2015 models.

60. Real world testing conducted by other parties is corroborative. On the road, over an urban/suburban route, a MY 2014 Ram 1500 vehicle produced average NO<sub>x</sub> emissions that exceeded federal certification standards by approximately 15-19 times. When tested on a highway route, the average NO<sub>x</sub> emissions measured 35 times the EPA Tier 2 Bin 5 standard.

**VI. DEFENDANTS DEFRAUDED CONSUMERS BY PROMISING “CLEAN,” “ECO-FRIENDLY” VEHICLES, WHICH IN FACT UNLAWFULLY POLLUTED THE AIR.**

**A. Defendants’ “EcoDiesel” Branding Was Deceptive.**

61. At all relevant times, to spur sales in the United States, FCA proudly touted the performance and reliability of its diesel vehicles and its purported environmental leadership, intentionally targeting its marketing to environmentally conscious consumers.

62. FCA knew that consumers associated diesel engines with pollution and sought to dispel them by branding the Diesel Vehicles as “environmentally friendly” “EcoDiesels.”

63. To drive home the purported clean, “green,” environmentally-friendly nature of its new engine, FCA also created an “EcoDiesel” badge that incorporated an image of a leaf, which FCA “intended to emphasize the ‘green’ and eco-friendly properties of the engine and bold, stylized interlocking letters, bordered by a trapezoid with interior asymmetrical outlining.”

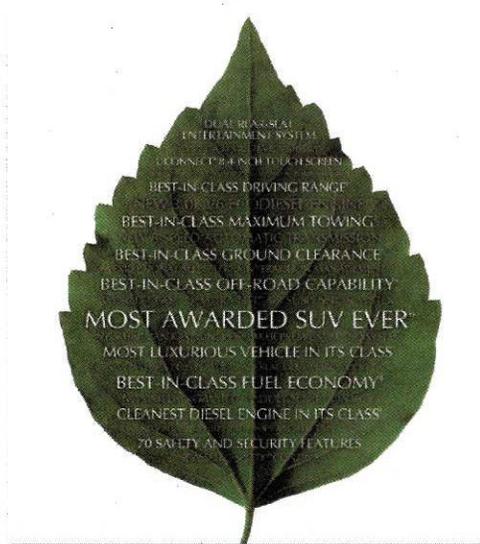


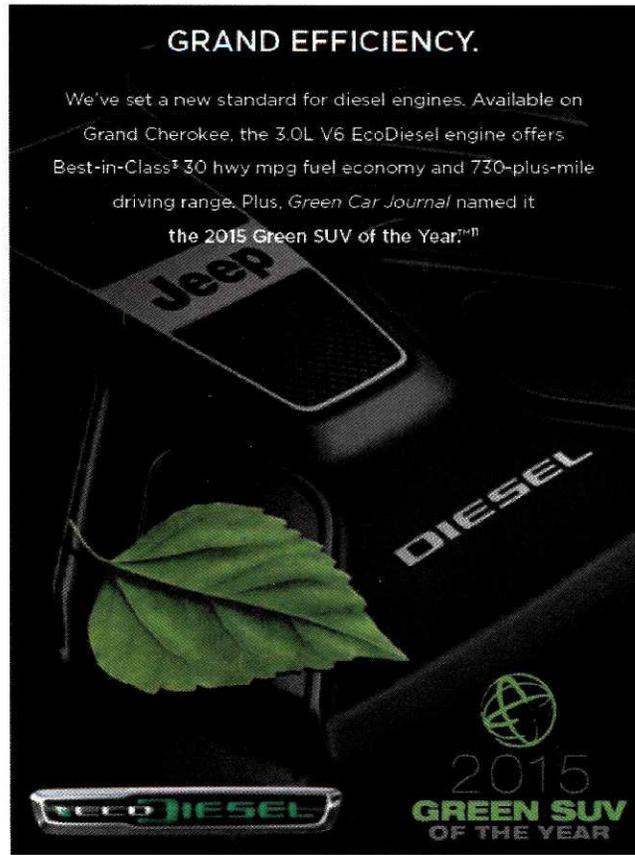
64. From 2013 through 2016, FCA spent tens of millions of dollars to develop and place internet, television and print ads advertising the fuel efficiency, performance, and environmental

hygiene of the Diesel Vehicles, to rebrand diesel as a clean-running, fuel-efficient, fun alternative to their gas and hybrid competitors and to associate the FCA brands with progressive ideals, environmental consciousness and innovation.

65. Print advertisements featuring images of evergreen forests and unspoiled fall foliage were overlaid with phrases like “love the planet along with great fuel economy” and “adhere to your principles and get extra points for embracing innovative technology.”

66. The EcoDiesel campaign was a success: the Jeep Cherokee was named “2015 Green SUV of the Year,” and the Ram 1500 EcoDiesel was named “Green Truck of the Year,” by *Green Car Journal*. FCA seized on these titles to bolster its claims of eco-friendliness using images and messages like the ones pictured directly below:





**RamTrucks** @RamTrucks · 6 Nov 2014

It's a lean, green, efficient machine. Ram 1500 EcoDiesel is named Green Truck of the Year by Green Car Journal.



1 45 70

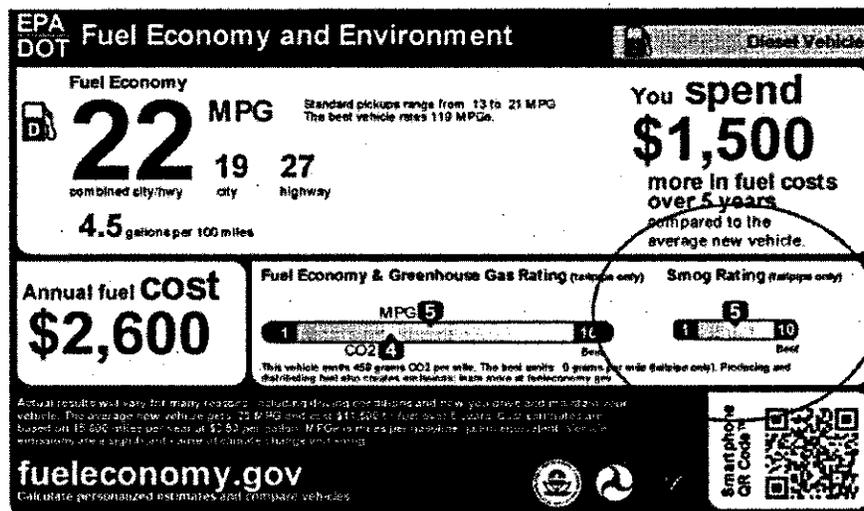
**B. FCA Subjected Buyers and Lessees to False Representations and Warranties at the Point of Sale.**

67. In addition to promoting sales through its misleading advertising campaigns, FCA knowingly subjected actual and potential buyers and lessees to additional misrepresentations at the point of sale and after.

68. Window stickers affixed to each of the Diesel Vehicles for sale or lease reflected average “smog ratings” when, in fact, the Diesel Vehicles’ NO<sub>x</sub> emissions—a major factor in smog ratings—actually exceeded applicable standards.

For more information visit: [www.ramtrucks.com](http://www.ramtrucks.com)  
or call 1-866-RAMINFO

Chrysler Group LLC



69. Further, in California emissions warranties, FCA expressly warranted to purchasers and lessees that the Diesel Vehicles were designed, built, and equipped to conform with applicable CARB requirements and, therefore, ECL Article 19 and its implementing regulations.

70. These express warranties were categorically false in light of the installation and calibration of the Undisclosed AECs.

**C. FCA Trained Dealers to Push the “EcoDiesel” Message of Environmental Friendliness.**

71. FCA instructed its dealers how to use the “EcoDiesel” moniker to foster positive feelings in potential buyers and how to overcome the most common negative stereotypes about diesel engine vehicles.

72. FCA created a 2-page “Hot Sheet” for the 2014 Jeep Grand Cherokee that contained FCA’s three key selling messages for the “EcoDiesel” powertrain: (1) best-in-class fuel economy, (2) best-in-class driving range, and (3) “cleanest diesel—lowest CO<sub>2</sub> versus competitive diesel UVs.” The hot sheet further instructed the FCA sales force to reinforce the message that EcoDiesel vehicles complied with “50 State emissions” laws thanks to the inclusion of the “DEF injection system & SCR catalyst.”

73. FCA gave dealer representatives attending the “Chrysler Academy” the 2014 Jeep Grand Cherokee Product Reference Guide that perpetuated FCA’s EcoDiesel advertising strategy, containing statements like:

- “DIRTY POLLUTER? – EXACTLY THE OPPOSITE – CLEANER AND MORE ECOLOGICAL THAN GASOLINE ENGINES.”
- “And, for buyers who respect the environment, they should know this is a very clean diesel...very green without question.”
- “And, for those with a strong sense of environmental responsibility, our three-liter EcoDiesel V6 engine runs exceptionally clean...”

74. FCA dealers employed this marketing strategy on consumers in each of the 50 states.

**D. FCA’s “EcoDiesel” Campaign Worked.**

75. Consumers purchased and leased Diesel Vehicles based on FCA’s false and misleading representations that the vehicles would be environmentally friendly and clean, fuel-efficient, and compliant with all applicable emission standards, and that they would provide superior performance.

76. Purchasers were willing to pay price premiums of thousands of dollars, depending on the model and trim packages, despite the fact that, unbeknownst to them, the Diesel Vehicles they purchased and leased were far from “Eco” friendly. Instead, they grossly violate emission standards during normal operations.

77. If the State of New York had known of the true effect of the defeat devices on the operation of the “clean diesel” engine systems and the true levels of pollutants the engines emitted, the State would not have allowed the Diesel Vehicles to be placed in New York for sale, lease, or use on its roadways, and the State and New York residents would have avoided significant NO<sub>x</sub> and related air pollution.

## VII. REGULATORY SETTING

### A. New York Environmental Laws Require Cars to Meet Strict Emission Standards and Mandate Substantial Penalties for Violations.

78. Pursuant to 42 U.S.C. § 7507, Section 177 of the Clean Air Act, New York has incorporated into state law and enforces under its sovereign powers automobile emission standards identical to those enacted in California, standards which are generally more stringent than those promulgated by EPA and enforced by the federal government in those states that have not chosen to incorporate and enforce California’s standards. As a result, vehicles sold or registered in New York must meet these more stringent emission standards, and violations of these emission regulations are violations of New York law.

79. At all times relevant to the allegations in this Complaint, New York has incorporated the California automobile emission standards, which are found at CCR title 13, §§ 1900 *et seq.*, into New York’s Emission Standards for Motor Vehicles and Motor Vehicle Engines regulations at 6 NYCRR §§ 200.9 and 218, promulgated under Article 19 of the Environmental Conservation Law. With ECL Article 19, its implementing regulations, and related provisions of law, New

York has established a comprehensive regulatory scheme designed to prevent the release of pollution to the atmosphere by, among other things, controlling the amount of air contaminants, like NO<sub>x</sub>, that are emitted from motor vehicles. Specifically, in relevant part:

- a. 6 NYCRR § 218-2.1(a) forbids any person from selling, registering, offering for sale or lease, importing, delivering, purchasing, renting, leasing, acquiring or receiving a new or used motor vehicle that is not certified as meeting certain of California's emission regulations (incorporated by reference at 6 NYCRR § 200.9), including:
  - i. 13 CCR §§ 1960.1, 1960.1.5, 1960.1(g)(2), 1961(b)(1), 1961, and 1961.2, which set forth limitations on the emission of various air contaminants, including NO<sub>x</sub>, from passenger vehicles and vehicle fleets; and
  - ii. 13 CCR §§ 1968.1 and 1968.2, which set forth various requirements for the functioning of the OBD system on passenger vehicles.
- b. 6 NYCRR § 218-11.1 makes it unlawful for any person to sell, register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a 2010 or subsequent model year passenger car in New York unless an environmental performance label has been affixed pursuant to the requirements of 13 CCR § 1965.
- c. 6 NYCRR § 200.3 prohibits any person from making a false statement in connection with applications, plans, specifications or reports submitted pursuant to New York's air pollution regulations.
- d. 6 NYCRR § 218-6.2 makes it unlawful for any person to disconnect, modify, or alter any air contaminant emission control system for motor vehicles required by the New York air pollution regulations, except when necessary to repair the vehicle.

Additionally, this section requires the air contaminant emission control system on all

- motor vehicles in New York to be correctly installed and maintained in operating condition.
- e. Pursuant to ECL § 19-0303 and New York Vehicle and Traffic Law § 301(a), motor vehicles in New York must be inspected annually for safety and at least biennially for air emissions compliance.
  - f. Vehicle & Traffic Law § 375.28-a forbids any person from removing, dismantling, or otherwise causing to be inoperative any equipment or feature constituting an operational element of a motor vehicle's air pollution control system or mechanism required by state or federal law or by any rules or regulations promulgated pursuant thereto.
  - g. Pursuant to Vehicle & Traffic Law Article 9, section 375.28-c, "[e]xcept where inconsistent with federal law, rules and regulations, every motor vehicle registered in the state and manufactured or assembled after June thirty, nineteen hundred sixty-seven and known as a nineteen hundred sixty-eight or subsequent model shall be equipped with an air contaminant emission control system of a type approved by the state commissioner of environmental conservation."
  - h. 6 NYCRR § 211.1 more generally prohibits any person from "caus[ing] or allow[ing] emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property."
80. ECL §§ 71-2103 and 71-2107 authorize civil penalties and injunctive relief for violations of New York's air pollution regulations. Vehicle and Traffic Law § 1800(b) directs that

violations of that statute's provisions constitute a traffic infraction with attendant fines and other penalties.

81. The Attorney General of New York is authorized to recover penalties or seek injunctive relief to remedy violations of ECL article 19 and implementing regulations. ECL §§ 71-2103(2), 71-2107.

82. The Attorney General is also authorized to seek penalties and injunctive relief to remedy repeated illegality in the conduct of business, including violations of the Environmental Conservation Law, its implementing regulations, and the Vehicles and Traffic Law, pursuant to Executive Law § 63(12).

**B. General Business Law Article 22-A, §§ 349 and 350 Prohibit Deceptive Acts and Practices and False Advertising.**

83. GBL § 349 prohibits deceptive acts and practices in the conduct of any business, trade, or commerce and authorizes the Attorney General to commence an action to enjoin further violations and to seek restitution and costs.

84. GBL § 350 prohibits false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in the state of New York.

85. GBL § 350-a defines false advertising as advertising which is "misleading in a material respect."

86. In determining whether advertising is misleading, GBL § 350-a provides that the court must take "into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary and usual."

87. For both deceptive acts and practices under GBL § 349 and false advertising under GBL § 350, statements or omissions need not rise to the level of fraud, but need only be likely to mislead a reasonable consumer acting reasonably under the circumstances.

88. GBL § 350-d provides for the assessment of a civil penalty for each deceptive act or practice or false advertisement in violation of GBL §§ 349 or 350.

89. In any action or proceeding pursuant to GBL §§ 349 and 350, pursuant to CPLR § 8303(a)(6), the Attorney General is entitled also to recover \$2,000 against each defendant, whether or not other costs have been awarded.

**C. New York's Executive Law § 63(12) Prohibits Repeated or Persistent Fraud or Illegality in the Transaction of Business.**

90. Executive Law § 63(12) authorizes the Attorney General to bring a proceeding to enjoin repeated or persistent fraud or illegal conduct in the carrying on, conducting, or transaction of business.

91. Executive Law § 63(12) defines the terms "fraud" or "fraudulent" as "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions."

92. Although fraud under § 63(12) includes common law fraud, it is not necessary to establish the traditional elements of common law fraud, such as intent to deceive or reliance. The test of fraudulent conduct under § 63(12) is whether the act or practice has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.

93. "Illegal" conduct under Executive Law § 63(12) includes the violation of any state, federal, or local law or regulation.

94. Under Executive Law § 63(12), "repeated" fraud or illegality means the repetition of separate and distinct acts or conduct that affects more than one person, and "persistent" fraud or

illegality means the continuance or carrying on of any fraudulent or illegal act or conduct.

95. Executive Law § 63(12) provides for injunctive relief, restitution, damages, disgorgement of profits, and other appropriate equitable relief.

96. In any action or proceeding pursuant to Executive Law § 63(12), pursuant to CPLR § 8303(a)(6), the Attorney General is entitled also to recover \$2,000 against each defendant, whether or not other costs have been awarded.

## CAUSES OF ACTION

### COUNT I

#### **PURSUANT TO ECL §§ 71-2103 AND 71-2107: VIOLATIONS OF NEW YORK STATE EMISSION STANDARDS AND ON-BOARD DIAGNOSTIC REQUIREMENTS (All Defendants)**

97. The State repeats and re-alleges paragraphs 1 through 96 as if fully set forth herein.

98. Pursuant to 6 NYCRR §§ 218-2.1 and 200.9, motor vehicles or motor vehicle engines may not be sold, registered, offered for sale or lease, imported, delivered, purchased, rented, leased, acquired, or received in New York unless they have been certified as complying with and actually comply with limitations on the emission of NO<sub>x</sub> set forth in 13 CCR §§ 1961(b)(1) and 1961.2 and requirements for the proper functioning of the OBD set forth in 13 CCR §§ 1968.1 and 1968.2.

99. For the Diesel Vehicles, Defendants' certifications were based on CARB Executive Orders certifying the vehicles' compliance with California Emission Regulations. Those Executive Orders were invalid and/or fraudulently procured because they were based on fraudulent certification documents in which Defendants failed to disclose the existence of the

Undisclosed AECDs, and further failed to disclose that those Undisclosed AECDs acted, alone or in combination, as illegal defeat devices, in violation of 6 NYCRR §§ 218-2.1 and 200.9.

100. Defendants sold, registered, offered for sale or lease, imported, delivered, purchased, rented, leased, acquired, or received in New York the Diesel Vehicles, which exceeded the applicable emission limitations for NO<sub>x</sub> by as much as 25 times, in violation of 6 NYCRR §§ 218-2.1 and 200.9.

101. Defendants sold, registered, offered for sale or lease, imported, delivered, purchased, rented, leased, acquired, or received in New York the Diesel Vehicles, which contained defeat devices that obviated the intended purpose of the OBD in violation of the various requirements for the functioning of the OBD on passenger vehicles as set forth in 13 CCR §§ 1968.1 and 1968.2, in violation of 6 NYCRR §§ 218-2.1 and 200.9.

## **COUNT II**

### **PURSUANT TO ECL §§ 71-2103 AND 71-2107: VIOLATIONS OF PROHIBITION OF FALSE STATEMENTS IN EMISSIONS CERTIFICATION AND REPORTING (All Defendants)**

102. The State repeats and re-alleges paragraphs 1 through 101 as if fully set forth herein.

103. 6 NYCRR § 200.3 provides that no person shall make a false statement in connection with applications, plans, specifications, and/or reports submitted pursuant to New York's air pollution regulations.

104. 6 NYCRR § 218-2.1 requires that all new and used motor vehicles offered for sale or lease in New York be certified to state emission standards (including those incorporated by reference at 6 NYCRR § 200.9). Pursuant to 6 NYCRR § 218-2.2(a), DEC relies on published CARB Executive Orders for vehicle certification, a fact Defendants knew or should have known.

105. Because DEC relied on these Executive Orders and Defendants' submissions to California for certification of the Diesel Vehicles, which were inaccurate due to Defendants' failure to disclose the Undisclosed AECDs, Defendants violated 6 NYCRR § 200.3.

**COUNT III**

**PURSUANT TO ECL §§ 71-2103 AND 71-2107:  
VIOLATIONS OF NEW YORK STATE ENVIRONMENTAL PERFORMANCE  
LABEL REQUIREMENTS  
(All Defendants)**

106. The State repeats and re-alleges paragraphs 1 through 105 as if fully set forth herein.

107. Pursuant to 6 NYCRR §§ 218-11.1 & 200.9, it is unlawful for any person to sell, register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a 2010 or subsequent model year passenger car in New York unless an environmental performance label has been affixed pursuant to 13 CCR § 1965.

108. By producing cars for certification that contained AECDs that were not disclosed to regulators and which, alone or in combination, acted as defeat devices designed to render inoperative or otherwise alter the emission control system in the Diesel Vehicles, Defendants fraudulently obtained environmental performance labels pursuant to 13 CCR § 1965.

109. Accordingly, each Diesel Vehicle was sold, registered, offered for sale or lease, imported, delivered, purchased, rented, leased, acquired or received in New York without a valid environmental performance label, in violation of 6 NYCRR §§ 218-11.1 and 200.9.

**COUNT IV****PURSUANT TO ECL §§ 71-2103 AND 71-2107:  
VIOLATIONS OF NEW YORK STATE PROHIBITION OF DEFEAT DEVICES  
(All Defendants)**

110. The State repeats and re-alleges paragraphs 1 through 109 as if fully set forth herein.

111. Pursuant to 6 NYCRR § 218-6.2, no person shall disconnect, modify, or alter any air containment emission control system required by New York air pollution regulations, except as necessary to repair the vehicle.

112. By installing and using on each of the Diesel Vehicles multiple AECDs that were not disclosed to regulators and which, alone or in combination, acted as defeat devices that caused the emission control system of each vehicle to be disconnected, modified, or rendered inoperative, Defendants violated, or caused or allowed the violation of 6 NYCRR § 218-6.2 with respect to each of the Diesel Vehicles.

113. By installing and concealing on each of the Diesel Vehicles multiple AECDs that were not disclosed to regulators and which, alone or in combination, acted as defeat devices, Defendants subverted the intended purpose of the OBD in normal, non-emissions test operating conditions, and by providing the Diesel Vehicles to dealers for sale or lease to customers, Defendants caused the Diesel Vehicles to operate in such a manner that subverts the intended purpose of the OBD in violation of the ECL and 6 NYCRR Parts 200 and 218.

**COUNT V****PURSUANT TO ECL §§ 71-2103 AND 71-2107:  
VIOLATIONS OF NEW YORK STATE LAW PROHIBITING EMISSIONS THAT  
UNREASONABLY INTERFERE WITH THE COMFORTABLE ENJOYMENT OF  
LIFE OR PROPERTY  
(All Defendants)**

114. The State repeats and re-alleges paragraphs 1 through 113 as if fully set forth herein.

115. By offering for sale or lease in New York the Diesel Vehicles that emit NO<sub>x</sub> in excess of state emission standards as codified in 6 NYCRR §§ 218-2.1 & 200.9, Defendants have “caus[ed] or allow[ed] emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property” throughout New York, in violation of 6 NYCRR § 211.1.

116. Excess NO<sub>x</sub>, ozone, and particulate matter are present throughout New York as a result of Defendants’ actions and illegal and harmful pollution continues to be emitted into New York’s environment from the Diesel Vehicles. NO<sub>x</sub> in the atmosphere can lead to the formation of ozone and particulate matter, which are serious problems in New York and harmful to its residents’ health.

117. As a direct and proximate result of Defendants’ conduct, excess NO<sub>x</sub>, ozone and particulate matter are present throughout New York, and are continuing to be emitted into the environment.

118. As a direct and proximate result of Defendants’ conduct, large numbers of people throughout New York have been exposed and/or will continue to be exposed to excess NO<sub>x</sub>, ozone and particulate matter, thereby affecting the health, safety and welfare of each person.

**COUNT VI****VIOLATION OF GBL § 349  
(All Defendants)**

119. The State repeats and re-alleges paragraphs 1 through 118 as if fully set forth herein.
120. At all relevant times, Defendants have been persons engaged in business, trade or commerce in New York within the meaning of GBL § 349.
121. Defendants engaged in deceptive acts or practices by, without limitation:
- a. Manufacturing and/or installing certain AECs in the Diesel Vehicles that were not disclosed to regulators and which, alone or in combination, acted as defeat devices, rendering those vehicles non-conforming with applicable emission standards;
  - b. Misrepresenting and/or falsely certifying and warranting the Diesel Vehicles' compliance with applicable emission standards;
  - c. Placing into commerce vehicles that failed to comply with applicable emission standards;
  - d. Failing to disclose and/or actively concealing from environmental regulators the existence of the Undisclosed AECs and their harmful environmental impact;
  - e. Failing to disclose and/or actively concealing from consumers the existence of the Undisclosed AECs and their harmful environmental impact;
  - f. Violating the explicit terms of an express warranty issued to each buyer and lessor of a Diesel Vehicle, namely, the express warranty that the car conformed to applicable state and federal emission standards and other applicable environmental standards;
  - g. Selling and offering for sale vehicles that were defective because, without limitation, the vehicles failed to conform to applicable state and federal emission standards;
  - h. Falsely and deceptively advertising, promoting and warranting the Diesel Vehicles as "clean" and "green" and compliant with emission standards despite the fact that, in regular driving, they emit NO<sub>x</sub> at many multiples the allowable amounts; and
  - i. Falsely, misleadingly and/or deceptively advertising, promoting and warranting the Diesel Vehicles by failing to disclose that certain performance measures could only be met when the Undisclosed AECs were operating.

122. Defendants' conduct was knowing and willful.

123. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

### **COUNT VII**

#### **VIOLATION OF GBL § 350 (All Defendants)**

124. The State repeats and re-alleges paragraphs 1 through 123 as if fully set forth herein.

125. At all relevant times, Defendants have been persons engaged in business, trade or commerce in New York within the meaning of GBL § 350.

126. Defendants engaged in false advertising in violation of GBL § 350 by, without limitation:

- a. Falsely and deceptively advertising, promoting and warranting the Diesel Vehicles' compliance with applicable emission standards;
- b. Falsely and deceptively advertising, promoting and warranting the Diesel Vehicles as "clean" and "green" despite the fact that, in regular driving, they emit NO<sub>x</sub> at many multiples the allowable amounts; and
- c. Falsely and deceptively advertising, promoting and warranting the Diesel Vehicles by failing to disclose that certain performance measures could only be met when the Undisclosed AECs were operating.

127. Defendants' conduct was knowing and willful.

128. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

**COUNT VIII****PURSUANT TO EXECUTIVE LAW § 63(12):  
REPEATED AND PERSISTENT ILLEGALITY  
(All Defendants)**

129. The State repeats and re-alleges paragraphs 1 through 128 as if fully set forth herein.
130. At all relevant times, Defendants have been persons engaged in carrying on, conducting, or transaction of business in New York within the meaning of Executive Law § 63(12).
131. Defendants have engaged in repeated and persistent illegal acts in violation of Executive Law § 63(12) by, without limitation:
- a. Selling, registering, offering for sale or lease, delivering, purchasing, renting, leasing, acquiring, or receiving in New York the Diesel Vehicles, which:
    - i. exceeded the applicable emission limitations for NO<sub>x</sub> by as much as 25 times, in violation of 6 NYCRR §§ 218-2.1 and 200.9;
    - ii. caused air pollution that is injurious to human health and welfare and the environment throughout New York, in violation of 6 NYCRR § 211.1;
    - iii. contained defeat devices that obviated the intended purpose of the OBD in violation of the various requirements for the functioning of the OBD on passenger vehicles as set forth in 13 CCR §§ 1968.1 and 1968.2, in violation of 6 NYCRR §§ 218-2.1 and 200.9; and
    - iv. lacked valid environmental performance labels, in violation of 6 NYCRR §§ 218-11.1 and 200.9;
  - b. Submitting to CARB certification documents for the Diesel Vehicles that were inaccurate due to Defendants' failure to disclose the Undisclosed AECDS, in violation of 6 NYCRR § 200.3;
  - c. Installing and using on each of the Diesel Vehicles multiple AECDS that were not disclosed to regulators and which, alone or in combination, acted as defeat devices, and providing the Diesel Vehicles to dealers for sale or lease to customers, thereby:
    - i. causing the emission control system of each vehicle to be disconnected, modified, or rendered inoperative, in violation or causing or allowing the

violation of 6 NYCRR § 218-6.2 and Vehicle & Traffic Law Article 9, § 375.28-a;

- ii. subverting the intended purpose of the OBD in normal, non-emissions test operating conditions, and causing the Diesel Vehicles to operate in such a manner that subverts the intended purpose of the OBD, in violation of the Vehicle & Traffic Law, the ECL and 6 NYCRR Parts 200 and 218; and
- iii. preventing the installed air pollution control systems in the vehicles from operating in continued conformity with state emission standards, in violation of Vehicle & Traffic Law § 375.28-c;
- d. Engaging in deceptive acts or practices in the conduct of business, trade or commerce in the state of New York in violation of GBL § 349; and
- e. Engaging in false advertising in the conduct of business, trade or commerce in the state of New York in violation of GBL § 350.

132. Defendants' repeated and persistent illegal conduct was knowing and willful.

133. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain and who unwittingly bought and drove cars that violated the law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

**COUNT IX**

**PURSUANT TO EXECUTIVE LAW § 63(12):**

**FRAUD**

**(All Defendants)**

134. The State repeats and re-alleges paragraphs 1 through 133 as if fully set forth herein.

135. At all relevant times, Defendants have been persons engaged in carrying on, conducting, or transaction of business in New York within the meaning of Executive Law § 63(12).

136. Defendants engaged in repeated and persistent fraud in violation of Executive Law § 63(12) by, without limitation:

- a. Manufacturing and/or installing certain AECs in the Diesel Vehicles that were not disclosed to regulators and which, alone or in combination, acted as defeat devices, rendering those vehicles non-conforming with applicable emission standards;
- b. Misrepresenting and/or falsely certifying and warranting the Diesel Vehicles' compliance with applicable emission standards;
- c. Placing into commerce vehicles that failed to comply with applicable emission standards;
- d. Failing to disclose and/or actively concealing from environmental regulators the existence of the Undisclosed AECs and their harmful environmental impact;
- e. Failing to disclose and/or actively concealing from consumers the existence of the Undisclosed AECs and their harmful environmental impact;
- f. Violating the explicit terms of an express warranty issued to each buyer and lessor of a Diesel Vehicle, namely, the express warranty that the car conformed to applicable state and federal emission standards and other applicable environmental standards;
- g. Selling and offering for sale vehicles that were defective because, without limitation, the vehicles failed to conform to applicable state and federal emission standards;
- h. Falsely and deceptively advertising, promoting and warranting the Diesel Vehicles as "clean" and "green" and compliant with emissions standards despite the fact that, in regular driving, they emit NO<sub>x</sub> at many multiples the allowable amounts; and
- i. Falsely, misleadingly and/or deceptively advertising, promoting and warranting the Diesel Vehicles by failing to disclose that certain performance measures could only be met when the Undisclosed AECs were operating.

137. When making the decision to purchase or lease a Diesel Vehicle, consumers in New York reasonably relied on Defendants' fraudulent misstatements, omissions and practices regarding the clean, green and environmentally-friendly characteristics of the Diesel Vehicles as well as their purported compliance with the law.

138. Defendants' repeated and persistent fraudulent conduct was knowing and willful.

139. Defendants' conduct has significantly harmed consumers in New York, who did not receive the benefit of their bargain and who unwittingly bought and drove cars that violated the

law and contributed to environmental harm notwithstanding that consumers believed they had purchased or leased an environmentally-friendly car.

### **PRAYER FOR RELIEF**

WHEREFORE, the State of New York requests that this Court grant the following relief:

- A. Enter an order providing appropriate relief under Executive Law § 63(12) and GBL Article 22-A, §§ 349 and 350 to New York consumers who purchased, leased or otherwise own a Diesel Vehicle sold or leased by Defendants, that requires Defendants to:
- i. Provide adequate and appropriate restitution and/or rescission;
  - ii. Promptly recall and repair Diesel Vehicles in New York in a manner that removes or permanently disables any defeat device, ensures compliance with all applicable emissions standards, and maintains the performance and fuel efficiency of the vehicle consistent with Defendants' representations at the time of the vehicle's original sale or lease; and
  - iii. Provide a warranty, for the life of the subject vehicle or lease, that it will conform to all applicable emission standards;
- B. Enter an order requiring Defendants to pay to New York pursuant to ECL § 71-2103(1), for violations of 6 NYCRR §§ 200.3, 200.9, 211.1, 218-2.1, 218-6.2, and 218-11.1, civil penalties and pursuant to Vehicle & Traffic Law § 1800(b)(1), for violations of Vehicle & Traffic Law §§ 375.28-a and 375.28-c, a fine for each violation;

- C. Enter an order requiring Defendants to pay a civil penalty for each violation of GBL §§ 349 and 350;
- D. Enter an order pursuant to ECL §§ 71-2103 and 71-2107 and Executive Law § 63(12) permanently enjoining Defendants from:
- i. Selling, offering for sale, introducing into commerce, or delivering for introduction into commerce into New York any new motor vehicle equipped with an undisclosed AECD or defeat device or any new motor vehicle not eligible for sale pursuant to emission and environmental standards in New York;
  - ii. Bypassing, defeating, or rendering inoperative any device or element of design installed on or in a new motor vehicle in compliance with emission and environmental standards in New York; and
  - iii. Submitting or causing to be submitted false or misleading certifications to DEC;
- E. Enter an order pursuant to ECL §§ 71-2103 and 71-2107 and Executive Law § 63(12) requiring Defendants to abate and mitigate their emissions of NO<sub>x</sub> and other pollutants emitted in excess of applicable emission standards;
- F. Award Plaintiffs costs plus an additional allowance of \$2,000 against each Defendant pursuant to CPLR § 8303(a)(6); and
- G. Grant such additional and further relief as the Court deems appropriate and just.

January 10, 2019

Respectfully submitted,

LETITIA JAMES  
Attorney General  
State of New York  
Attorney for Plaintiffs State of New York  
and the New York State Department of  
Environmental Conservation

By: 

DAVID E. NACHMAN  
Senior Enforcement Counsel  
Executive Division  
DANIELLE FIDLER  
NOAH POPP  
CHANNING WISTAR-JONES  
Assistant Attorneys General  
28 Liberty Street  
New York, New York 10005  
(212) 416-8000

and

MORGAN COSTELLO  
Chief, Affirmative Litigation Section  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224  
(518) 776-2392